THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.13814 OF 2006

DATED: 21ST JULY, 2006.

Between :

Preethi Communications, rep. by its Prop.
Sandilya 402, Radha beach residency,
Maharanipeta, Hyderabad. … Petitioner

And

1. Telecom Regulatory Authority of India,
   A-2/14, Safdarjung Enclave, New Delhi,
   And others. .. Respondents

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O R D E R :

The petitioner claims to be a registered multi-system operator under Sections 3 and 4 of the Cable Television Networks (Regulation) Act, 1995 (for short 'the Cable Act, 1995'). It is stated that since 2004 onwards the petitioner has been carrying on the business as a multi-system operator by supplying the signals of satellite television channels to other multi-system operators, cable operators and households through cable.

In this writ petition, the petitioner seeks a Writ of Mandamus declaring the Telecommunication (Broadcasting and Cable Services) Inter-connection Regulations, 2004 (for short, 'the Regulations') as arbitrary, illegal and ultra vires the provisions of the Telecom Regulatory Authority of India Act, 1997 (for short, 'the TRAI Act') and further to declare the orders passed by the 2nd respondent - The Telecom Disputes Settlement and Appellate Tribunal dated 30-1-2006 and 3-7-2006 in Petition No.24 (C) of 2006 and M.A.No.76 of 2006 in Petition No.24 (C) of 2006 as arbitrary and illegal.

The vires of the Regulations is challenged on the ground that the 1st respondent - TRAI has no jurisdiction to frame Regulations dealing with the relationship between broadcaster and cable operator/multi-system operator since the broadcasting is not included within the definition of Telecommunication Services under Section 2 (1) (k) of the TRAI Act. It is also contended that the definition of

service provider does not include broadcaster.

The validity of the Regulations was questioned on identical grounds in W.P.Nos.27978 of 2005 and 768 of 2006. This Court, having considered all the relevant statutory provisions, by common order, dated 6-7-2006, while upholding the validity of the Regulations, held as under :

> *"Thus, it is clear that in view of the qualifying expression i.e., "**in this Act unless the context otherwise requires**" the definitions contained in Section 2 (1) of the TRAI Act, 1997 must be examined in the light of the context in which the particular word is used keeping in view the object underlying the Act, the preamble and all the other enacting parts of the statute. The Statement of Objects and Reasons of the TRAI Act, 1997 shows that the Act has been enacted to constitute an independent Telecom Regulatory Body for regulation of telecom services for orderly and healthy growth of telecommunication infrastructure apart from protection of consumer interest. As noted above, by virtue of the Notification dated 9-1-2004 the cable sector has also been brought under the telecommunication services. Hence, undoubtedly, the word "service provider" means not only the Government and the licensee but also includes the other categories of persons if the context of the Act so requires.*
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> *Keeping in view the object of the TRAI Act, 1997 and the powers and functions of the TRAI as enumerated under Section 11 of the Act as well as the power conferred on the TRAI under Section 36 (1) to make regulations consistent with the Act and the Rules made thereunder to carry out the purposes of the Act and by virtue of the opening words viz., **in this Act unless the context otherwise requires** in sub-section (1) of Section 2 of the Act, I am of the opinion that the definition of **service provider** under Section 2 (1) (j) is inclusive of cable operators on account of the context in which the said word has been used in Section 36 read with Section 11 (b) of the TRAI Act. Consequently the TRAI is competent to make regulations under Section 36 of the Act even with regard to the matters relating to the cable operators."*

This Court has also taken into consideration the fact that the definition of Telecommunication Service under Section 2 (1) (k) of the TRAI Act, 1997, though initially did not include broadcasting and cable services, a proviso was inserted to Section 2 (1) (k) under the Amendment Act 2 of 2000 w.e.f. 24-1-2000 empowering the Central Government to notify other service to be telecommunication service including broadcasting services. In exercise of the said power, the Department of Telecommunications, Ministry of Communications and Information Technology, Government of India vide Notification dated 9-1-2004 notified broadcasting and cable service as telecommunication services. Thereafter, in exercise of the power conferred under Section 36 of the TRAI Act, 1997, the TRAI made the impugned regulations of 2004 covering the arrangements among service providers for inter-connection and revenue share for all telecommunication, broadcasting and cable services throughout the territory of India. Hence, the contention of the petitioner that broadcasting is not included within the definition of telecommunication service under Section 2 (1) (k) of the TRAI Act, 1997 and as such the 1st respondent is without any power or authority to make the impugned regulations regulating the broadcasting is without any substance and cannot be accepted.

So far as the orders passed by the Tribunal dated 30-1-2006 and 3-7-2006 which are impugned in this writ petition are concerned, it is true that no appeal is maintainable under Section 18 of the Act against an interlocutory order. On that ground, the learned Counsel for the petitioner vehemently contended that in the absence of any other alternative remedy, this writ petition is maintainable.

No doubt, the impugned orders were passed as an interim measure pending the Petition filed by the 3rd respondent under

Section 14 of the Act. By virtue of the said orders, the respondent therein was directed to give signals directly to the 3rd respondent herein. However, admittedly, the matter stands posted to 24-7-2006 before the Tribunal. Though the petitioner was not a party to the proceedings, in case the petitioner is aggrieved by the said orders, it is always open to him to approach the Tribunal by making an appropriate application. Without taking such steps, the petitioner cannot straightaway invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

Accordingly, following the order dated 6-7-2006 in W.P.Nos.27978 of 2005 and 768 of 2006, the Writ Petition is dismissed. However, this shall not preclude the petitioner to approach the Tribunal if he is so advised. No order as to costs.

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G. ROHINI, J.

Dt. 21-7-2006
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